

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

06-02-02

EUGENIO PAGE-MORE  
Petitioner,

vs.

HOMELAND SECURITY OR THE OLD  
INS IMMIGRATION AND NATURALIZATION SERVICES

WARDEN DAVID L. WINN, et al.  
Respondent.

05-40096W64

CR NO. \_\_\_\_\_

CIV NO. \_\_\_\_\_

---

**PETITION FOR WRIT OF HABEAS COURPUS 28 U.S.C. § 2241; IN RE:  
RELEASE FROM CUSTODY AND BRIEF.**

---

PETITIONER, Eugenio Page More, respecfully moves this Honorable Court appearing pro-se requesting to grant all liberal considerations and construe this petition for release from custody and brief as it may deem appropiate in order to do substantial justice when addressing the bases of the claims Haines vs. Kerner., 404 U.S. 519 (1992) "all pleadings shall be so constructed to do substantial justice". the petitioner moves the Court as follows:

**JURISDICTION**

This Court has jurisdiction pursuant to 28 USC § 2241 et seq; U.S. constitution art. I § 8 Cl. 6 and 10. III § 2 Cl. 1, 2, and 3; and 28 U.S.C. § 1331. Venue reside in this court Ad Hoc as both the INS and petitioner reside and/or do business in the venue. I abide.

## BACKGROUND

The petitioner is a Cuban refugee, on or about 1999-2000, the petitioner went in front of the Honorable Judge Roberto Ruff at the state court of West Rosbury, Massachusetts.

Petitioner was accused of the violation of probation by his probation Officer, Lucila Matos who was the petitioner officer supervisor at the time , due to a one year probation imposed by the state of Massachusetts.

On the outcome of the hearing in front of Judge Ruff, the petitioner was found guilty for violation of probation and sentenced to one year served time at the state county jail of South Bay, Massachusetts.

After the petitioner completion of his state prison sentence of one year approximately at the end of year 2000, the petitioner immediately was transferred from the state custody to the INS, today home land security federal custody (defendant). The petitioner has not been out of custody since his initial state incarceration and denied release from federal prison, unconstitutionally for almost five years. Until now there was no hope for Cuban refugees who have no nation to return to. See attach; Clark v. Martinez 160 Led 2d (2005).

The petitioner is a political victim of the Castro Cuban communist dictatorial regime. Petitioner migrated to the United States seeking freedom, looking for the democratic way of life.

The petitioner is not a dangerous person nor he suffer from any mental defect, in fact attach to this motion is the later BOP team review and petitioner progress report, where he has been rated as a good worker with a clear conduct, with a commitment of completion of 2 adult continue education courses. The INS detainer originated after the release of petitioner from South Bay State Jail in Massachusetts. The petitioner is register under the INS files No. A 23 215 879.

#### CHANGES OF CASE LAW

The Supreme Court has rule that the fedeal government may not hold "aliens", i.e. foreign nationals, more than 180 days past their release date on time to depart aliens from the U.S.A. The watershed rule effectuates Cubans whom are not deportable because of politics in Washington, D.C.

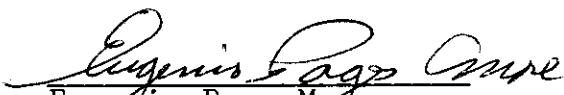
In sum, the court is moved to order the respondents INS and/or B.O.P to immediately release this prisoner as he qualifies under Clark v. Martinez , and its progeny.

The petitioner has a home and friends/family that are waiting for his return to integrated him as part of their circle as well as petitioner common-law Indalecia Montanez (see attachs). Any other information pertaining the petitioner will be furnished upon request.

**CONCLUSION**

Petitioner moves the court to order him release within 10 days or as soon as reasonably possible for this court and defendants to reply, based upon Clark vs. Martinez.

Respectfully submitted,

  
Eugenio Page More  
Reg # 01362-131 GA  
F.M.C. Devens G-A  
P.O. Bos 879  
Ayer, MA. 01432

**CERTIFICATE OF SERVICE**

I, Eugenio Page More, Petitioner, acting Pro Se, do hereby certify that I have served this motion along with my original motion 28 U.S.C § 2241, and swear under the penalty of perjury, that everything in the aforementioned motion is true to the best of my ability, so help me God.

1. The Clerk of the U.S District Court United States District Court for the District of Boston Massachusetts One Courthouse Way Boston, MA 02210	2. U.S.A U.S Attorney Office One Courthouse Way Suite 9200 Boston Massachusetts 02210
--	---

  
Eugenio Page More

**ATTACHMENTS**

January 19, 2005

Counselor O'Connor  
Federal Medical Center  
P.O. Box 880  
Ayer MA 01432

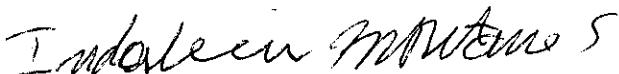
**RE: EUGENIO PAGES**

**TO WHOM IT MAY CONCERN:**

My name is **INDALECIA MONTANEZ**, I am presently residing at 342 Bowdoin St., Apt 2, Dorchester MA 02121 and I hereby certify that I am the common-law wife of **EUGENIO PAGES** and I have known him for more than 20 years. I love him very much and at the present time he is very sick for which I am pleading with you to help him. I will be responsible for him and I am asking that you give him a chance. He also has one son and one sister both of whom are willing to be responsible for him.

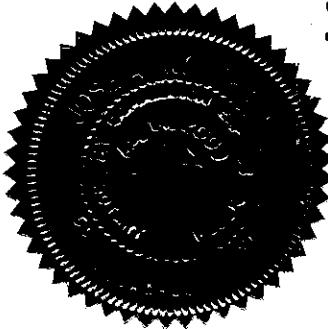
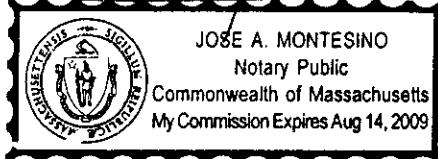
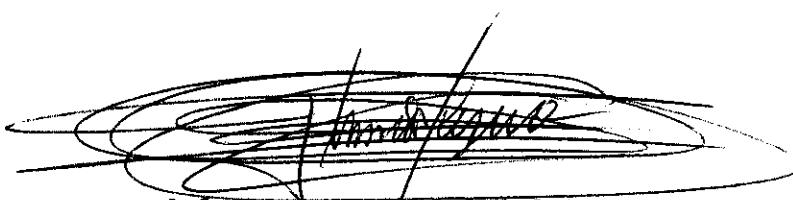
Eugenio is a very good person and his health problem is worrying me a lot. I would be forever grateful with you. Should you need any further information don't hesitate to contact me at your earliest convenience at 617-822-9719.

Sincerely,



Indalecia Montanez

*Sworn to before me this  
19<sup>th</sup> day of January of  
the year 2005.*



February 17, 2004

Mr. W. Campbell  
Low Security Correctional Institute  
P.O. Box 1500  
White Deer PA 17837

**RE: EUGENIO PAGES REGISTER NO. 01362-131**

**TO WHOM IT MAY CONCERN:**

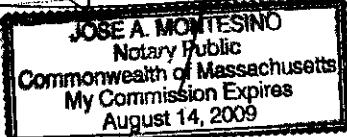
My name is **INDALECIA MONTANEZ**, and I hereby certify that I am the wife of **EUGENIO PAGES** for more than 6 years. I love him very much and at the present time he is very sick for which I am pleading with you to help him. I will be responsible for him and I am asking that you give him a chance.

Eugenio is a very good person and his health problem is worrying me a lot. I would be forever grateful with you. Should you need any further information don't hesitate to contact me at your earliest convenience at 617-822-9719.

Sincerely,

+Indalecia Montanez  
Indalecia Montanez

*Sworn to before me this  
17<sup>th</sup> day of February of  
the year 2004.*





DEVCOV  
PAGE 631

## PROGRAM REVIEW REPORT

\* 04-29-2005  
10:07:40

INSTITUTION: DEV DEVENS FMC

NAME . . . . . : PAGES-MORE, EUGENIO  
RESIDENCE . . . : OAK INS, LA 71467

REG. NO: 01362-131

TYPE OF REVIEW . . . . . : INITIAL CLASSIFICATION/PROGRAM REVIEW  
NEXT REVIEW DATE . . . . : 4/1/05PROJ. RELEASE DATE . . . : UNKNOWN  
PAROLE HEARING DATE . . . : NONERELEASE METHOD . . . : UNKNOWN  
HEARING TYPE . . . : NONE

DATE OF NEXT CUSTODY REVIEW: N/A

DETAINERS (Y/N): Y

CIM STATUS (Y/N) . . . . : Y

IF YES, RECONCILED (Y/N): Y

PENDING CHARGES . . . . : ICE Detainer - Mariel

OFFENDER IS SUBJECT TO NOTIFICATION UNDER 18 U.S.C. 4042(B) (Y/N) . . . . : N  
IF YES - CIRCLE ONE - DRUG TRAFFICKING/CURRENT VIOLENCE/PAST VIOLENCE

CATEGORY	CURRENT ASSIGNMENT	EFF DATE	TIME	
CMA	CRP RV DT	CUT-IN REVIEW PANEL HRNG DUE DT	05-07-2005	0825
CMA	IHP CMPWDE	IMM HRG COMPL-WILL DEPORT-EOIR	12-10-1981	1459
CMA	MARIEL	MARIEL CUBAN	09-29-1995	0852
CMA	MENTAL IN	MENTAL HEALTH INPATIENT	03-29-1996	0838
CMA	FROG RPT	NEXT PROGRESS REPORT DUE DATE	01-07-2008	0846
CMA	RPP PART	RELEASE PREP PGM PAPTCIPATES	05-17-2004	1332
CMA	V94 COB913	V94 CURR OTHER BEFORE 91/14	05-28-1996	0805
CUS	IN	IN CUSTODY	04-26-2002	1553
DRG	DRG I NONE	NO DRUG INTERVIEW REQUIRED	07-22-2002	1924
DRG	ED WAIT V	DRUG EDUCATION WAIT-VOLUNTEER	12-17-2002	1451
EDT	ESL TEMP X	ESL NEED-TEMPORARILY EXEMPT	12-28-2004	0858
EDI	GED TN	EXEMPT/TEMP GED NON-PROMOTABLE	12-28-2004	0858
EDI	GED UNSAT	GED PROGRESS UNSATISFACTORY	12-05-1997	1517
FRP	NO OBLG	FINANC RESP-NO OBLIGATION	05-18-2004	1543
LEV	LOW	SECURITY CLASSIFICATION LOW	04-26-2002	1557
MDS	COLD/WIND	NO EXCESS COLD/WIND	11-04-2002	1551
MDS	LOWER BUNK	LOWER BUNK REQUIRED	12-29-2004	1007
MDS	NO F/S	NO FOOD SERVICE WORK	10-08-2002	0648
MDS	REG DUTY W	REGULAR DUTY W/MED RESTRICTION	01-22-2005	0001
MDS	SOFT SHOES	SOFT SHOES ONLY	02-02-2004	0928
MDS	STAND RSTR	NO PROLONGED STANDING	11-04-2002	1551
MDS	WGT 15 LB	WEIGHT-NO LIFTING OVER 15 LBS	10-08-2002	0648
QTR	G01-108L	HOUSE G/RANGE 01/BED 108L	10-12-2004	1707
RLG	CATHOLIC	CATHOLIC	02-23-1996	0737
WRK	CCS ORD PM	CCS ORDERLY PM	02-05-2005	0001

WORK PERFORMANCE RATING:

Good ratings as CCS orderly

INCIDENT REPORTS SINCE LAST PROGRAM REVIEW:

Clear conduct

FRP PLAN/PROGRESS: No obligation

Comd dep \$420.48 TJS balance-\$19.96

DEVCV  
PAGE 002

## PROGRAM REVIEW REPORT

\* 04-29-2005  
10:07:40

RELEASE PREPARATION PARTICIPATION:

Should enroll at this time

CCC RECOMMENDATION:

Pending ICE approval

PROGRESS MADE SINCE LAST REVIEW:

Clear conduct good  
work ratings, No ACE courses  
completed

GOALS FOR NEXT PROGRAM REVIEW MEETING:

Complete 2 ACE courses, earn good  
work ratings and maintain  
clear conduct thru 11/05.

LONG TERM GOALS:

Complete the RPP prior  
to release.

OTHER INMATE REQUESTS/TEAM ACTIONS:

None

107/408 reviewed.

DEVIN  
PAGE 033 OF 003

PROGRAM REVIEW REPORT

\* 04-29-2005  
10:07:40

SIGNATURES:

UNIT MANAGER:

Tony Collier

INMATE: P

DATE:

5/6/05

DATE:

5/6/05

 (Signature)



(Sip Opinion)

OCTOBER TERM, 2004

1

### Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

## SUPREME COURT OF THE UNITED STATES

### Syllabus

CLARK, FIELD OFFICE DIRECTOR, SEATTLE,  
IMMIGRATION AND CUSTOMS ENFORCEMENT,  
ET AL. v. MARTINEZ

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR  
THE NINTH CIRCUIT

No. 03-878. Argued October 13, 2004—Decided January 12, 2005\*

If an alien is found inadmissible and ordered removed, the Secretary of Homeland Security (Secretary) ordinarily must remove the alien from the country within 90 days. 8 U. S. C. §1231(a)(1)(A). Here, Martinez, respondent in No. 03-878, and Benitez, petitioner in No. 03-7434, Cuban nationals who are both inadmissible under §1182, were ordered removed, but were detained beyond the 90-day removal period. Each filed a habeas corpus petition challenging his continued detention. In Martinez's case, the District Court found that removal was not reasonably foreseeable and ordered that Martinez be released under appropriate conditions. The Ninth Circuit affirmed. In Benitez's case, the District Court also accepted that removal would not occur in the foreseeable future, but nonetheless denied the petition. The Eleventh Circuit affirmed.

*Held:*

1. Under §1231(a)(6), the Secretary may detain inadmissible aliens beyond the 90-day removal period, but only for so long as is reasonably necessary to achieve removal. Section 1231(a)(6)'s operative language, "may be detained beyond the removal period," applies equally to all aliens that are its subject, whether or not those aliens have been admitted to the country. In *Zadvydas v. Davis*, 533 U. S. 678, this Court interpreted §1231(a)(6) to authorize the detention of aliens

\* Together with No. 03-7434, *Benitez v. Razos, Field Office Director, Miami, Immigration and Customs Enforcement*; on certiorari to the United States Court of Appeals for the Eleventh Circuit.

Cite as: 543 U.S. \_\_\_\_ (2005)

1

Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

**SUPREME COURT OF THE UNITED STATES**

Nos. 03-878 and 03-7434

A. NEIL CLARK, FIELD OFFICE DIRECTOR,  
SEATTLE, WASHINGTON, IMMIGRATION  
AND CUSTOMS ENFORCEMENT, ET AL.,  
PETITIONERS

03-878 □

v.

SERGIO SUAREZ MARTINEZ

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE NINTH CIRCUIT

DANIEL BENITEZ, PETITIONER

03-7434

v.

MICHAEL ROZOS, FIELD OFFICE DIRECTOR, MIAMI,  
FLORIDA, IMMIGRATION AND CUSTOMS  
ENFORCEMENT

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE ELEVENTH CIRCUIT

[January 12, 2005]

JUSTICE SCALIA delivered the opinion of the Court.

An alien arriving in the United States must be inspected by an immigration official, 66 Stat. 198, as amended, 8 U. S. C. §1225(a)(3), and, unless he is found "clearly and beyond a doubt entitled to be admitted," must generally undergo removal proceedings to determine admissibility, §1225(b)(2)(A). Meanwhile the alien may be detained, subject to the Secretary's discretionary authority to parole him into the country. See 8 U. S. C. §1182(d)(5); 8 CFR §212.5 (2004). If, at the conclusion of removal proceed-

Cite as: 543 U.S. \_\_\_\_ (2005)

3

## Opinion of the Court

in California, Pet. for Cert. in No. 03-878, at 7; when Benitez sought adjustment in 1985, he had been convicted of grand theft in Florida, 337 F. 3d, at 1290. Both men were convicted of additional felonies after their adjustment applications were denied: Martinez of petty theft with a prior conviction (1996), assault with a deadly weapon (1998), and attempted oral copulation by force (1999), see Pet. for Cert. in No. 03-878, at 7-8; Benitez of two counts of armed robbery, armed burglary of a conveyance, armed burglary of a structure, aggravated battery, carrying a concealed firearm, unlawful possession of a firearm while engaged in a criminal offense, and unlawful possession, sale, or delivery of a firearm with an altered serial number (1993), see 337 F. 3d, at 1290-1291.

The Attorney General revoked Martinez's parole in December 2000. Martinez was taken into custody by the INS, and removal proceedings were commenced against him. Pet. for Cert. in No. 03-878, at 8. An Immigration Judge found him inadmissible by reason of his prior convictions, §1182(a)(2)(B), and lack of sufficient documentation, §1182(a)(7)(A)(i)(I), and ordered him removed to Cuba. Martinez did not appeal. Pet. for Cert. in No. 03-878, at 8. The INS continued to detain him after expiration of the 90-day removal period, and he remained in custody until he was released pursuant to the District Court order that was affirmed by the Court of Appeals' decision on review here. *Id.*, at 9.

Benitez's parole was revoked in 1993 (shortly after he was imprisoned for his convictions of that year), and the INS immediately initiated removal proceedings against him. In December 1994, an Immigration Judge determined Benitez to be excludable and ordered him deported under §§1182(a)(2)(B) and 1182(a)(7)(A)(i)(I) (1994 ed. and Supp. V).<sup>2</sup> 337 F. 3d, at 1291. Benitez did not seek fur-

---

<sup>2</sup> Before the 1996 enactment of the Illegal Immigration Reform and

Cite as: 543 U.S. \_\_\_\_ (2005)

5

## Opinion of the Court

INS to release Martinez under conditions that the INS believed appropriate. *Martinez v. Smith*, No. CV 02-972-PA (Oct. 30, 2002), App. to Pet. for Cert. in No. 03-878, p. 2a. The Court of Appeals for the Ninth Circuit summarily affirmed, citing its decision in *Xi v. INS*, 298 F. 3d 832 (2002). *Martinez v. Ashcroft*, No. 03-35053 (Aug. 18, 2003), App. to Pet. for Cert. in No. 03-878, at 1A. In Benitez's case, the District Court for the Northern District of Florida also concluded that removal would not occur in the "foreseeable future," but nonetheless denied the petition. *Benitez v. Wallis*, Case No. 5:02cv19 MMP (July 11, 2002), pp. 2, 4, App. in No. 03-7434, pp. 45, 48. The Court of Appeals for the Eleventh Circuit affirmed, agreeing with the dissent in *Xi*. *Benitez v. Wallis*, 337 F. 3d 1289 (2003). We granted certiorari in both cases. *Benitez v. Wallis*, 540 U. S. 1147 (2004); *Crawford v. Martinez*, 540 U. S. 1217 (2004).

## II

Title 8 U. S. C. §1231(a)(6) provides, in relevant part, as follows:

"An alien ordered removed who is inadmissible under section 1182 of this title, removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who has been determined by the [Secretary] to be a risk to the community or unlikely to comply with the order of removal, may be detained beyond the removal period and, if released, shall be subject to the terms of supervision in paragraph (3)."

By its terms, this provision applies to three categories of aliens: (1) those ordered removed who are inadmissible under §1182, (2) those ordered removed who are removable under §1227(a)(1)(C), 1227(a)(2), or 1227(a)(4), and (3) those ordered removed whom the Secretary determines to be either a risk to the community or a flight risk. In *Zadvydas v. Davis*, 533 U. S. 678 (2001), the Court inter-

## Opinion of the Court

can be read to "suggest [less than] unlimited discretion" to detain, *id.*, at 697. It cannot, however, be interpreted to do both at the same time.

The dissent's belief that *Zadvydas* compels this result rests primarily on that case's statement that "[a]liens who have not yet gained initial admission to this country would present a very different question," 533 U. S. at 682. See *post*, at 3–4, 6 (opinion of THOMAS, J.). This mistakes the reservation of a question with its answer. Neither the opinion of the Court nor the dissent in *Zadvydas* so much as hints that the Court adopted the novel interpretation of §1231(a)(6) proposed by today's dissent. The opinion in that case considered whether §1231(a)(6) permitted the Government to detain removable aliens indefinitely; relying on ambiguities in the statutory text and the canon that statutes should be interpreted to avoid constitutional doubts, the opinion held that it did not. Despite the dissent's repeated claims that §1231(a)(6) could not be given a different reading for inadmissible aliens, see *Zadvydas*, *supra*, at 710, 716–717, the Court refused to decide that question—the question we answer today. It is indeed different from the question decided in *Zadvydas*, but because the statutory text provides for no distinction between admitted and nonadmitted aliens, we find that it results in the same answer.<sup>4</sup>

The dissent's contention that our reading of *Zadvydas* is "implausible," *post*, at 2, is hard to reconcile with the fact

---

<sup>4</sup>The dissent is quite wrong in saying, *post*, at 4, that the *Zadvydas* Court's belief that §1231(a)(6) did not apply to all aliens is evidenced by its statement that it did not "consider terrorism or other special circumstances where special arrangements might be made for forms of preventive detention," 533 U. S., at 695. The Court's interpretation of §1231(a)(6) did not affect the detention of alien terrorists for the simple reason that sustained detention of alien terrorists is a "special arrangement" authorized by a different statutory provision, 8 U. S. C. §1537(b)(2)(C). See *Zadvydas*, 533 U. S., at 697.

## Opinion of the Court

tion cases “[b]ecause we must interpret the statute consistently, whether we encounter its application in a criminal or noncriminal context”); *United States v. Thompson/Center Arms Co.*, 504 U.S. 505, 517–518, and n. 10 (1992) (plurality opinion) (employing the rule of lenity to interpret “a tax statute . . . in a civil setting” because the statute “has criminal applications”); *id.*, at 519 (SCALIA, J., concurring in judgment) (also invoking the rule of lenity). In other words, when deciding which of two plausible statutory constructions to adopt, a court must consider the necessary consequences of its choice. If one of them would raise a multitude of constitutional problems, the other should prevail—whether or not those constitutional problems pertain to the particular litigant before the Court.<sup>5</sup>

The dissent takes issue with this maxim of statutory construction on the ground that it allows litigants to “attack statutes as constitutionally invalid based on constitutional doubts concerning other litigants or factual circumstances” and thereby to effect an “end run around black-letter constitutional doctrine governing facial and as-applied constitutional challenges.” *Ante*, at 10. This accusation misconceives—and fundamentally so—the role played by the canon of constitutional avoidance in statutory interpretation. The canon is not a method of adjudicating constitutional questions by other means. See, e.g., *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490, 502 (1979) (refusing to engage in extended analysis in the

<sup>5</sup>Contrary to the dissent’s contentions, *post*, at 8, our decision in *Salinas v. United States*, 522 U.S. 52 (1997), is perfectly consistent with this principle of construction. In *Salinas*, the Court rejected the petitioner’s invocation of the avoidance canon because the text of the statute was “unambiguous on the point under consideration.” 522 U.S., at 60. For this reason, the Court squarely addressed and rejected any argument that the statute was unconstitutional as applied to the petitioner. *Id.*, at 61 (holding that, under the construction adopted by the Court, “the statute is constitutional as applied in this case”).

## Opinion of the Court

United States Employees' Compensation Commission "full power and authority to hear and determine all questions in respect of" claims under the Longshoremen's and Harbor Workers' Compensation Act. 285 U. S., at 62. The question presented was whether this provision precluded review of the Deputy Commissioner's determination that the claimant was an employee, and hence covered by the Act. The Court held that, although the statute could be read to bar judicial review altogether, it was also susceptible of a narrower reading that permitted judicial review of the fact of employment, which was an "essential condition precedent to the right to make the claim." *Ibid.* The Court adopted the latter construction in order to avoid serious constitutional questions that it believed would be raised by total preclusion of judicial review. *Ibid.* This holding does not produce a statute that bears two different meanings, depending on the presence or absence of a constitutional question. Always, and as applied to all claimants, it permits judicial review of the employment finding. What corresponds to *Crowell v. Benson*'s holding that the fact of employment is judicially reviewable is *Zadvydas*'s holding that detention cannot be continued once removal is no longer reasonably foreseeable—and, like the one, the other applies in all cases.

The dissent, on the other hand, relies on our recent cases interpreting 28 U. S. C. §1337(d). *Raygor v. Regents of Univ. of Minn.*, 534 U. S. 533 (2002), held that this provision does not include, in its tolling of limitations periods, claims against States that have not waived their immunity from suit in federal court, because the statutory language fails to make "unmistakably clear," "as it must in provisions subjecting States to suit, that such States were covered. *Id.*, at 543–546. A subsequent decision, *Jinks v. Richland County*, 538 U. S. 456 (2003), held that the tolling provision does apply to claims against political subdivisions of States, since the requirement of the unmis-

## Opinion of the Court

since interpreting the statute to authorize indefinite detention (one plausible reading) would approach constitutional limits, the statute should be read (in line with the other plausible reading) to authorize detention only for a period consistent with the purpose of effectuating removal. 533 U.S., at 697–699. If we were, as the Government seems to believe, free to “interpret” statutes as becoming inoperative when they “approach constitutional limits,” we would be able to spare ourselves the necessity of ever finding a statute unconstitutional as applied. And the doctrine that statutes should be construed to contain substantive dispositions that do not raise constitutional difficulty would be a thing of the past; no need for such caution, since—whatever the substantive dispositions are—they become inoperative when constitutional limits are “approached.” That is not the legal world we live in. The canon of constitutional avoidance comes into play only when, after the application of ordinary textual analysis, the statute is found to be susceptible of more than one construction; and the canon functions as a means of choosing between them. See, e.g., *Almendarez-Torres v. United States*, 523 U.S. 224, 237–238 (1998); *United States ex rel. Attorney General v. Delaware & Hudson Co.*, 213 U.S. 366, 408 (1909). In *Zadvydas*, it was the statute’s text read in light of its purpose, not some implicit statutory command to avoid approaching constitutional limits, which produced the rule that the Secretary may detain aliens only for the period reasonably necessary to bring about their removal. See 533 U.S., at 697–699.

In passing in its briefs, but more intensively at oral argument, the Government sought to justify its continued detention of these aliens on the authority of §1182(d)(5)(A).<sup>7</sup> Even assuming that an alien who is

---

<sup>7</sup>Section 1182(d)(5)(A) reads as follows:

“The [Secretary] may ... in his discretion parole into the United

Cite as: 543 U.S. \_\_\_\_ (2005)

15

Opinion of the Court

indefinite detention in the face of *Zadvydas* would establish within our jurisprudence, beyond the power of Congress to remedy, the dangerous principle that judges can give the same statutory text different meanings in different cases.

Since the Government has suggested no reason why the period of time reasonably necessary to effect removal is longer for an inadmissible alien, the 6-month presumptive detention period we prescribed in *Zadvydas* applies. See 533 U.S., at 699-701. Both Martinez and Benitez were detained well beyond six months after their removal orders became final. The Government having brought forward nothing to indicate that a substantial likelihood of removal subsists despite the passage of six months (indeed, it concedes that it is no longer even involved in repatriation negotiations with Cuba); and the District Court in each case having determined that removal to Cuba is not reasonably foreseeable; the petitions for habeas corpus should have been granted. Accordingly, we affirm the judgment of the Ninth Circuit, reverse the judgment of the Eleventh Circuit, and remand both cases for proceedings consistent with this opinion.

*It is so ordered.*

---

§1226a(a)(6) (2000 ed., Supp. II)).

O'CONNOR, J., concurring

the Government shows that to be true, then detention beyond six months will be lawful within the meaning we ascribed to 8 U. S. C. §1231(a)(6) in *Zadvydas*.

Moreover, the Government has other statutory means for detaining aliens whose removal is not foreseeable and whose presence poses security risks. Upon certifying that he has "reasonable grounds to believe" an alien has engaged in certain terrorist or other dangerous activity specified by statute, 8 U. S. C. §1226a(a)(3) (2000 ed., Supp. II), the Secretary of Homeland Security may detain that alien for successive six-month periods "if the release of the alien will threaten the national security of the United States or the safety of the community or any person," §1226a(a)(6).

Finally, any alien released as a result of today's holding remains subject to the conditions of supervised release. See 8 U. S. C. §1231(a)(3); 8 CFR §241.5 (2004). And, if he fails to comply with the conditions of release, he will be subject to criminal penalties—including further detention. See 8 U. S. C. §1253(b); *Zadvydas*, *supra*, at 695 ("We nowhere deny the right of Congress . . . to subject [aliens] to supervision within conditions when released from detention, or to incarcerate them where appropriate for violations of those conditions").

THOMAS, J., dissenting

Today, the Court holds that this constitutional distinction—which “made all the difference” to the *Zadvydas* Court, *id.*, at 693—is actually irrelevant, because “[t]he operative language of §1231(a)(6) . . . applies without differentiation to all three categories of aliens that are its subject.” *Ante*, at 6. While I wholeheartedly agree with the Court’s fidelity to the text of §1231(a)(6), the Court’s analysis cannot be squared with *Zadvydas*. And even if it could be so squared, *Zadvydas* was wrongly decided and should be overruled. I respectfully dissent.

I begin by addressing the majority’s interpretation of *Zadvydas*. The Court’s interpretation is not a fair reading of that case. It is also not required by any sound principle of statutory construction of which I am aware. To the contrary, what drives the majority’s reading is a novel “lowest common denominator” principle. *Ante*, at 8.

A

The majority’s reading of *Zadvydas* is implausible. *Zadvydas* held that interpreting §1231(a)(6) to authorize indefinite detention of admitted aliens later found removable would raise serious due process concerns. 533 U. S., at 690–696. The Court therefore read the statute to permit the Attorney General (now the Secretary of Homeland Security) to detain admitted aliens only as long as reasonably necessary to remove them from the country. *Id.*, at 699.

The majority concedes that *Zadvydas* explicitly reserved the question whether its statutory holding as to admitted aliens applied equally to *inadmissible* aliens. *Ante*, at 7. This reservation was front and center in *Zadvydas*. It appeared in the introduction and is worth repeating in full:

“In these cases, we must decide whether [§1231(a)(6)]

THOMAS, J., dissenting

the constitutional concerns involved in each case, then the question of how §1231(a)(6) applies to them would not be “very different” depending on the alien before the Court. The question would be trivial, because the text of §1231(a)(6) plainly does not distinguish between admitted and nonadmitted aliens. There would also have been no need for the Court to go out of its way to leave aside “terrorism or other special circumstances,” *id.*, at 696, or to disavow “considerat[ion of] the political branches’ authority to control entry into the United States,” *id.*, at 695, for the construction the majority extracts from *Zadvydas* would have applied across the board, *ibid.* And the Court’s rationalization that its construction would therefore “leave no unprotected spot in the Nation’s armor,” *id.*, at 695–696 (internal quotation marks omitted), would have been incorrect. The constitutional distinctions that pervade *Zadvydas* are evidence that the “very different” statutory question it reserved turned on them.

The *Zadvydas* Court thus tethered its reading of §1231(a)(6) to the specific class of aliens before it. The term this Court read into the statute was not simply a presumptive 6-month period, but a presumptive 6-month period for admitted aliens. Its reading of the statute “in light of the Constitution’s demands,” *id.*, at 689, that is, depended on the constitutional considerations at work in “*the cases before [it]*,” *id.*, at 695 (emphasis added). One would expect the Court today, then, to follow the same two-step procedure it employed in *Zadvydas*. It should first ask whether the statute is ambiguous and, if so, whether one of the possible interpretations raises constitutional doubts as applied to Martinez and Benitez. Step one is dictated by *Zadvydas*: §1231(a)(6) is not clear on whether it permits indefinite detention. The Court should then move to the second step and ask whether either of the statute’s possible interpretations raises constitutional doubts as applied to Benitez and Martinez. If so, the

THOMAS, J., dissenting

the dissent's premise that "it is not a plausible construction of §1231(a)(6) to imply a time limit as to one class and not to another." *Id.*, at 710 (opinion of KENNEDY, J.). But the *Zadvydas* majority disagreed with that assumption and adopted a contrary interpretation of §1231(a)(6). For as the dissent recognized, *Zadvydas*' logic might be that inadmissible and removable aliens might be treated differently." *Ibid.* That was *Zadvydas*' logic precisely, as its repeated statements limiting its decision to inadmissible aliens show. To interpret *Zadvydas* properly, we must take its logic as given, not the logic of the *reductio ad absurdum* of *Zadvydas* that I joined in dissent.

B

The majority strains to recharacterize *Zadvydas* because it thinks that "[i]t is not at all unusual to give a statute's ambiguous language a limiting construction called for by one of the statute's applications, even though other of the statute's applications, standing alone, would not support the same limitation." *Ante*, at 8. In other words, it claims, "[t]he lowest common denominator, as it were, must govern." *Ibid.* I disagree.

As an initial matter, this principle is inconsistent with *Zadvydas* itself. As explained above, the limiting construction *Zadvydas* adopted as to admitted aliens does not necessarily govern the other applications of §1231(a)(6). If the majority is correct that the "lowest common denominator" governs, then the careful distinction *Zadvydas* drew between admitted aliens and nonadmitted aliens was irrelevant at best and misleading at worst. Under this reading, *Zadvydas* would have come out the same way even if it had involved inadmissible aliens, for the "lowest common denominator" of the statute remains the same regardless of the identity of the alien before the Court. Again, this understanding of *Zadvydas* is implausible.

Beyond *Zadvydas*, the Court offers scant support for the

THOMAS, J., dissenting

claims against States." *Ante*, at 12. But as the Court concedes, *Jinks* reached that holding only after analyzing whether the constitutional doubts at issue in *Raygor* applied to the county defendant. *Ante*, at 12, n. 6. The Court's failure to do the same here cannot be reconciled with *Jinks* and *Raygor*: the Court should ask whether the constitutional concerns that justified the requirement of a clear statement in *Zadvydas* apply as well to inadmissible aliens.

The Court's "lowest common denominator" principle is also in tension with *Salinas v. United States*, 522 U. S. 52 (1997). There, we rejected an argument that the federal bribery statute, 18 U. S. C. §666(a)(1)(B) should be construed to avoid constitutional doubts, in part on the ground that there was "no serious *doubt* about the constitutionality of §666(a)(1)(B) as applied to the facts of this case." 522 U. S., at 60 (emphasis added). Unlike the Court's approach to avoidance today, we disclaimed examination of the constitutionality of applications not before the Court: "Whatever might be said about §666(a)(1)(B)'s application in other cases, the application of §666(a)(1)(B) did not extend federal power beyond its proper bounds." *Id.*, at 61. The Court is mistaken that this passage in *Salinas* was a rejection of a constitutional argument on its merits. *Ante*, at 9, n. 5. *Salinas*, the petitioner, phrased his question presented solely in terms of the proper statutory interpretation of §666(a)(1)(B) Brief for Petitioner, O. T. 1996, No. 96-738, p. i, and never claimed that the statute was unconstitutional, see generally *ibid.*

C

More importantly, however, the Court's "lowest common denominator" principle is inconsistent with the history of the canon of avoidance and is likely to have mischievous consequences. The modern canon of avoidance is a doctrine under which courts construe ambiguous statutes to avoid constitutional doubts, but this doctrine has its ori-

THOMAS, J., dissenting

tional version. Under modern avoidance, in other words, an ambiguous statute should be read to avoid a constitutional doubt only if the statute is constitutionally doubtful as applied to the litigant before the court (again, unless the constitutional challenge involves third-party rights). Yet the Court's lowest common denominator principle allows a limiting construction of an ambiguous statute prompted by constitutional doubts to infect other applications of the statute—even if the statute raises no constitutional doubt as applied to the specific litigant in a given case and even if the constitutionally unproblematic application of the statute to the litigant is severable from the constitutionally dubious applications. The lowest-common denominator principle thus allows an end run around black-letter constitutional doctrine governing facial and as-applied constitutional challenges to statutes. A litigant ordinarily cannot attack statutes as constitutionally invalid based on constitutional doubts concerning other litigants or factual circumstances.

The Court misses the point by answering that the canon of constitutional avoidance “is not a method of adjudicating constitutional questions by other means,” and that the canon rests on a presumption that “Congress did not intend the alternative which raises serious constitutional doubts.” *Ante*, at 10. That is true, but in deciding whether a plausible interpretation “raises serious constitutional doubts,” a court must employ the usual rules of constitutional adjudication. See *ante*, at 9 (noting that whether an interpretation is constitutionally doubtful turns on whether it raises “a multitude of constitutional problems”); *Zadvydas*, 533 U. S., at 690–696 (extensively employing constitutional analysis). Those rules include doctrines governing third-party constitutional challenges and the like. Moreover, the reason that courts perform avoidance at all, in any form, is that we assume “Congress intends statutes to have effect to the full extent the Con-

THOMAS, J., dissenting

Zadvydas himself, not its hypothetical application to other aliens, as its careful distinction between admitted and inadmissible aliens shows. To the extent that the rule of lenity is a nonconstitutionally based presumption about the interpretation of criminal statutes, the *Thompson/Center Arms* interpretive principle is fundamentally different from the canon of constitutional avoidance, because the rule of lenity is wholly independent of the rules governing constitutional adjudication. Either way, this case does not support the majority's restatement of modern avoidance principles.

The cases at bar illustrate well the exception to the normal operation of as-applied constitutional adjudication that the Court's approach creates. Congress explicitly provided that unconstitutional applications of §1231(a)(6) should be severed from constitutional applications.<sup>4</sup> Congress has thus indicated that courts should examine whether §1231(a)(6) raises a constitutional doubt application by application. After all, under the severability clause, if Zadvydas had held unconstitutional the indefinite detention of Zadvydas and Ho Ma, the constitutionality of the Secretary's indefinite detention of Benitez and Martinez would remain an open question. Although Zadvydas did not formally hold §1231(a)(6) to be unconstitutional as applied to the aliens before it, the same procedure should be followed when analyzing whether §1231(a)(6) raises a constitutional doubt.<sup>5</sup> The Court

---

<sup>4</sup>"If any provision of this division . . . or the application of such provision to any person or circumstances is held to be unconstitutional, the remainder of this division and the application of the provisions of this division to any person or circumstance shall not be affected thereby." Note following 8 U. S. C. §1101, p.840 (Separability).

<sup>5</sup>*Crowell v. Benson*, 285 U.S. 22 (1932), bolsters my approach. Employing the canon of avoidance, the Court construed a statute in that case to allow judicial review of jurisdictional facts but not legislative facts. It did so even though the terms of the statute itself did not distinguish between the two sorts of facts. *Id.*, at 62–63. The presence of a severability provi-

THOMAS, J., dissenting

In truth, the Court's aggressive application of modern constitutional avoidance doctrine poses the greater danger. A disturbing number of this Court's cases have applied the canon of constitutional doubt to statutes that were on their face clear. See, e.g., *INS v. St. Cyr*, 533 U. S. 289, 327–336 (2001) (SCALIA, J., dissenting); *Public Citizen v. Department of Justice*, 491 U. S. 440, 481–482 (1989) (KENNEDY, J., concurring in judgment); *Lowe v. SEC*, 472 U. S. 181, 212–213 (1985) (White, J., concurring in result). This Court and others may now employ the “lowest common denominator” approach to limit the application of statutes wholesale by searching for hypothetical unconstitutional applications of them—or, worse yet, hypothetical constitutional *doubts*—despite the absence of any facial constitutional problem (at least, so long as those hypothetical doubts pose “a multitude of constitutional problems,” *ante*, at 9). This is so even if Congress has expressed its clear intent that unconstitutional applications should be severed from constitutional applications, regardless of whether the challenger has third-party standing to raise the constitutional issue, and without the need to engage in full-fledged constitutional analysis.

This danger is real. In *St. Cyr*, this Court held that the Immigration and Nationality Act (INA) did not divest district courts of jurisdiction under 28 U. S. C. §2241 over habeas actions filed by criminal aliens to challenge removal orders, 533 U. S., at 314. The Court did so because it thought that otherwise the statute would preclude any avenue of judicial review of removal orders of criminal aliens, thus raising a serious Suspension Clause question. *Id.*, at 305. This was a construction of (among other provisions) 8 U. S. C. §§1252(a)(1) and 1252(b)(9), and 28 U. S. C. §2241, none of which distinguishes between criminal and noncriminal aliens. 533 U. S., at 308–314. The INA, however, clearly allows noncriminal aliens, unlike criminal aliens, a right to judicial review of removal

THOMAS, J., dissenting

*Hilton v. South Carolina Public Railways Comm'n*, 502 U. S. 197, 205 (1991). This rule, however, is not absolute, and we should not hesitate to allow our precedent to yield to the true meaning of an Act of Congress when our statutory precedent is "unworkable" or "badly reasoned." *Holder v. Hall*, 512 U. S. 874, 936 (1994) (THOMAS, J., concurring in judgment) (quoting *Payne v. Tennessee*, 501 U. S. 808, 827 (1991) (internal quotation marks omitted)). "[W]e have never applied *stare decisis* mechanically to prohibit overruling our earlier decisions determining the meaning of statutes." *Monell v. New York City Dept. of Social Servs.*, 436 U. S. 658, 695 (1978). The mere fact that Congress can overturn our cases by statute is no excuse for failing to overrule a statutory precedent of ours that is clearly wrong, for the realities of the legislative process often preclude readopting the original meaning of a statute that we have upset.

*Zadvydas*' reading of §1231(a)(6) is untenable. Section 1231(a)(6) provides that aliens whom the Secretary of Homeland Security has ordered removed "may be detained beyond the removal period." There is no qualification to this authorization, and no reference to a "reasonable time" limitation. Just as we exhaust the aid of the "traditional tools of statutory construction," *Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U. S. 837, 843, n. 9 (1984), before deferring to an agency's interpretation of a statute, so too should we exhaust those tools before deciding that a statute is ambiguous and that an alternative plausible construction of the statute should be adopted.

Application of those traditional tools begins and ends with the text of §1231(a)(6). *Zadvydas*' observation that "if Congress had meant to authorize long-term detention of unremovable aliens, it certainly could have spoken in clearer terms," 533 U. S., at 697, proves nothing. Congress could have spoken more clearly in any statutory case in which the statute does not mention the particular fac-

THOMAS, J., dissenting

Court's assurance that if "the security of our borders will be compromised if [the United States] must release into the country inadmissible aliens who cannot be removed. . . . Congress can attend to it," *ante*, at 14, rings hollow. Short of constitutional amendment, it is only within the power of this Court to correct *Zadvydas*' error.

The Court points to 8 U. S. C. §1226a(a)(6) (2000 ed., Supp. II), a statute that Congress passed shortly after *Zadvydas*, as evidence that Congress can correct *Zadvydas*' mistake. *Ante*, at 14–15, n. 8. This statute only confirms my concern that *Zadvydas* is legislatively uncorrectable. Section 1226a(a)(6) authorizes detention for a period of six months beyond the removal period of aliens who present a national security threat, but only to the extent that those aliens' removal is not reasonably foreseeable. *Ante*, at 14–15, n. 8. Yet *Zadvydas* conceded that indefinite detention might not violate due process in "certain special and narrow nonpunitive circumstances . . . where a special justification, such as harm-threatening mental illness, outweighs the individual's constitutionally protected interest in avoiding physical restraint." 533 U.S., at 690 (internal quotation marks and citations omitted). Moreover, *Zadvydas* set a 6-month presumptive outer limit on the detention power. *Id.*, at 701. Congress crafted §1226a(a)(6) to operate within the boundaries *Zadvydas* set. This provision says nothing about whether Congress may authorize detention of aliens for greater lengths of time or for reasons the Court found constitutionally problematic in *Zadvydas*.

\* \* \*

For the foregoing reasons, I would affirm the judgment of the Eleventh Circuit and reverse the judgment of the Ninth Circuit. I therefore respectfully dissent.

---

circumstances," citing *Zadvydas*).